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Kemang bin Awang & Ors v RHB Trustees Bhd (trustees to Linggiu Valley Orang Asli (JAKUNS) Trust)

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HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCvC-532–09 OF 2022
ROZ MAWAR JC
25 OCTOBER 2022

C

Civil Procedure — Judgments and orders — Consent judgment — Trust deed provided that plaintiffs entitled to payment — Defendant as trustees suspended payments to plaintiffs — Consent judgment required defendant to make payments to plaintiffs — Whether plaintiffs were entitled to interests on outstanding payments — Whether interests must be paid out of trust fund or by defendant — Whether plaintiffs were entitled to have access to exact details/accounts/receipts/payments and/or statements of all accounts of trust

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An agreement was entered between the Johor State Government and the Government of Singapore around 1990 for the construction of a dam at Sg Linggiu catchment area which comprised of several villages occupied by the orang asli including the plaintiffs and/or their ancestors. The orang asli had to be evicted to give vacant possession of the land. Legal action was ensued by the orang asli who were deprived of their ancestral land and traditional resources of

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their land and livelihood. The High Court gave judgment in favour of the orang asli in the sum of RM26.5m. The Court of Appeal affirmed the said decision with an additional 8% interest on the judgment sum and this was affirmed by the Federal Court. In response to the application by the orang asli to manage the judgment sum, the High Court ordered ('the trust order'),

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amongst others: (a) the Johor State Government was to pay the judgment sum with 8% interest amounting to RM34,554,111.92; (b) RM22m from the amount was to be paid into a trust account and a trust be established under the name of Linggiu Valley Orang Asli (JAKUNS) Trust ('the trust'); (c) the trust was to be established in the form as per the trust deed and as amended by the

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terms of the trust order; and (d) the balance of RM16,554,111.92 was to be distributed to the orang asli after the deduction of legal fees, costs, consultation fees and expenses incurred. The trust deed was executed and amongst the terms were that the orang asli and their descendants were entitled to payment of RM900 per month. The defendant was appointed as the trustee for the trust

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and at the beginning of its tenure, the defendant discharged its duties. An informal meeting in December 2019 between an alleged representative of the defendant and some of the beneficiaries of the trust, with one Saling bin Lau Bee Chiang suggested that payments to the plaintiffs ought to be stopped as they had moved to Rompin, Pahang. The defendant then suspended payments

to the plaintiffs with no prior notice or explanation. Hence, the filing of this suit by the plaintiffs. A consent judgment was recorded and confirmed all the plaintiffs except the first and 13th plaintiffs, were direct lineal descendants to the trust. The defendant was to make the payments to the second to 12th plaintiffs and the 14th to 19th plaintiffs ('the descendant plaintiffs'). The issues for determination were: (i) whether the descendant plaintiffs were entitled to interests on the outstanding payments; (ii) whether the interests must be paid out of the trust fund or by the defendant; and (iii) whether the descendant plaintiffs were entitled to have access to the exact details/accounts/receipts/payments and/or statements of all accounts of the trust from 2009 to 2019.

Held:

(1) The defendant as trustee could not stop any monthly payment whatsoever unless the court ordered so. When the defendant halted payments in December 2019, the descendant plaintiffs were deprived of their rights and entitlement to the monies due until April 2023 when the consent judgment provided for the payments of all monies due. As such, the descendant plaintiffs were entitled to interest on the outstanding sum. The interest awarded was in the sum of 8%pa on the sum to be paid, to be calculated from December 2019 until 11 April 2023. This was premised on s 11 of the Civil Law Act 1956 which accorded the courts the power to award interest on debts and damages and also O 42 r 12 of the Rules of Court 2012. The descendant plaintiffs were deprived of their entitlement over a substantial period of time. They also had lived in dire straits with the movement control order in 2020 as a result of the Covid-19 pandemic and the floods in 2021 when they had lived without any income. It was fit, fair and reasonable to order such interest at the rate of 8%pa (see paras 13–15).

(2) The trust deed empowered the trustee to invest monies as authorised or permitted under the Trustee Act 1949. To order the interest of 8%pa on the payments required to be paid by the defendant to the descendant plaintiffs to be paid from the trust fund did not prejudice the trust or its beneficiaries. It was fair to order so (see paras 18–19).

(3) The request sought by the descendant plaintiffs was not reasonable and proved too onerous on the defendant. The descendant plaintiffs had not demonstrated the need for such items. On the basis of fairness, the defendant was required to furnish to the descendant plaintiffs the financial statements for the years ended 2019, 2020, 2021 and 2022 prepared by a certified public accountant within seven days of the date of judgment (see paras 22–23).

[Bahasa Malaysia summary

Satu perjanjian telah dimeterai antara Kerajaan Negeri Johor dan Kerajaan Singapura sekitar tahun 1990 untuk pembinaan empangan di kawasan tadahan Sg Linggiu yang terdiri daripada beberapa kampung yang diduduki oleh orang asli termasuk plaintif dan/atau nenek moyang mereka. orang asli terpaksa diusir untuk memberi milikan kosong tanah. Tindakan undang-undang telah diambil oleh orang asli yang telah dilucutkan tanah nenek moyang mereka dan sumber tradisional tanah dan mata pencarian mereka. Mahkamah Tinggi memberikan penghakiman yang memihak kepada orang asli dengan jumlah RM26.5m. Mahkamah Rayuan mengesahkan keputusan tersebut dengan tambahan faedah 8% ke atas jumlah penghakiman dan ini disahkan oleh Mahkamah Persekutuan. Sebagai jawapan kepada permohonan orang asli untuk menguruskan jumlah penghakiman, Mahkamah Tinggi memerintahkan ('perintah amanah'), antara lain: (a) Kerajaan Negeri Johor perlu membayar jumlah penghakiman dengan faedah 8% berjumlah RM34,554,111.92; (b) RM22 juta daripada jumlah itu perlu dibayar ke dalam akaun amanah dan amanah ditubuhkan di bawah nama Amanah Orang Asli Lembah Linggiu (JAKUNS) ('amanah'); (c) amanah itu hendaklah ditubuhkan dalam bentuk seperti dalam surat ikatan amanah dan sebagaimana yang dipinda oleh terma perintah amanah; dan (d) baki RM16,554,111.92 akan diagihkan kepada orang asli selepas ditolak yuran guaman, kos, yuran perundingan dan perbelanjaan yang ditanggung. Surat ikatan amanah telah dilaksanakan dan antara termanya ialah orang asli dan keturunan mereka berhak menerima bayaran RM900 sebulan. Defendan telah dilantik sebagai pemegang amanah untuk amanah itu dan pada awal tempoh perkhidmatannya, defendan menunaikan kewajipannya. Satu mesyuarat tidak rasmi pada Disember 2019 antara wakil defendan dan beberapa penerima amanah, dengan seorang Saling bin Lau Bee Chiang mencadangkan pembayaran kepada plaintif perlu dihentikan kerana mereka telah berpindah ke Rompin, Pahang. Defendan kemudiannya menggantung pembayaran kepada plaintif tanpa sebarang notis atau penjelasan terlebih dahulu. Oleh itu, pemfailan saman ini oleh plaintif. Penghakiman persetujuan telah direkodkan dan mengesahkan semua plaintif kecuali plaintif pertama dan ke-13, adalah keturunan langsung kepada amanah. Defendan hendaklah membuat pembayaran kepada plaintif kedua hingga ke-12 dan plaintif ke-14 hingga ke-19 ('plaintif keturunan'). Isu untuk penentuan adalah: (i) sama ada plaintif keturunan berhak mendapat faedah ke atas bayaran tertunggak; (ii) sama ada faedah mesti dibayar daripada kumpulan wang amanah atau oleh defendan; dan (iii) sama ada plaintif keturunan berhak mendapat akses kepada butiran/akaun/resit/pembayaran dan/atau penyata yang tepat bagi semua akaun amanah dari 2009 hingga 2019.

Diputuskan:

(1) Defendan sebagai pemegang amanah tidak boleh menghentikan apa-apa

bayaran bulanan sekalipun melainkan mahkamah memerintahkan sedemikian. Apabila defendan menghentikan pembayaran pada Disember 2019, plaintif keturunan telah dilucutkan hak dan kelayakan mereka terhadap wang yang perlu dibayar sehingga April 2023 apabila penghakiman persetujuan memperuntukkan pembayaran semua wang yang perlu dibayar. Oleh itu, plaintif keturunan berhak mendapat faedah ke atas jumlah tertunggak. Faedah yang diberikan adalah dalam jumlah 8% setahun ke atas jumlah yang perlu dibayar, yang akan dikira dari Disember 2019 hingga 11 April 2023. Ini berdasarkan s 11 Akta Undang-Undang Sivil 1956 yang memberikan mahkamah kuasa untuk mengaward faedah ke atas hutang dan ganti rugi dan juga A 42 k 12 Kaedah-Kaedah Mahkamah 2012. Keturunan plaintif telah dilucutkan hak mereka dalam tempoh masa yang lama. Mereka juga pernah hidup dalam kesempitan dengan perintah kawalan pergerakan pada 2020 akibat pandemik Covid-19 dan banjir pada 2021 apabila mereka hidup tanpa sebarang pendapatan. Adalah wajar, adil dan munasabah untuk memerintahkan faedah sedemikian pada kadar 8% setahun (lihat perenggan 13–15).

(2) Surat ikatan amanah memberi kuasa kepada pemegang amanah untuk melaburkan wang sebagaimana yang dibenarkan atau dibenarkan di bawah Akta Pemegang Amanah 1949. Untuk memerintahkan faedah sebanyak 8% setahun ke atas bayaran yang perlu dibayar oleh defendan kepada plaintif keturunan yang perlu dibayar daripada dana amanah tidak menjejaskan amanah atau benefisiarinya. Adalah adil untuk memerintahkan sedemikian (lihat perenggan 18–19).

(3) Permintaan yang dipohon oleh plaintif keturunan adalah tidak munasabah dan terbukti terlalu membebankan defendan. Plaintif keturunan tidak menunjukkan keperluan untuk item tersebut. Atas dasar keadilan, defendan dikehendaki memberikan kepada plaintif keturunan penyata kewangan bagi tahun berakhir 2019, 2020, 2021 dan 2022 yang disediakan oleh akauntan awam bertauliah dalam tempoh tujuh hari dari tarikh penghakiman (lihat perenggan 22–23).]

Cases referred to

Bungsar Hill Holdings Sdn Bhd v Damansara Realty Bhd [2019] MLJU 222; [2019] 4 CLJ 429, FC (refd)

Damayanti Kantilal Doshi & Ors v Jigarlal Kantilal Doshi & Ors [1998] 4 MLJ 268; [1998] 4 CLJ 81, CA (refd)

Dato Vijay Kumar Natarajan v UOL Credit Sdn Bhd [2013] MLJU 1641; [2013] 9 CLJ 874, HC (refd)

Golden Stars & Ors v Ling Peek Hoe & Anor & Another Appeal [2023] 1 LNS 1406, CA (refd)

Lim Kar Bee v Abdul Latif bin Ismail [1978] 1 MLJ 109, FC (refd)

Saling bin Lau Bee Chiang & Ors v Kanawagi a/l Seperumaniam & Ors [2009]

MLJU 1512; [2010] 8 CLJ 347, HC (refd)
Vathemurthy a/l Arumugam & Anor v RS Thanenthiran a/l Raman Kutty & Anor [2019] 9 MLJ 212; [2019] 2 CLJ 132, HC (refd)
Yvonne Wong Yee Woon v Wong Yee Mei @ Cynthia (as administrator for the estate of Wong Poi Fong @ Wong Swee Fong, deceased) & Anor [2022] 12 MLJ 309; [2022] 6 CLJ 786, HC (refd)

Legislation referred to

Civil Law Act 1956 s 11
Rules of Court 2012 O 42 r 12
Trustee Act 1949

GK Ganesan (with TA Sivam, KM Geetha, Rabiah Abd Halim and Farihan Ibrahim) (Rabia Farihan & Sures) for the plaintiff.
Kenneth Koh (with Poon Wei Ying) (Xavier & Koh Partnership) for the defendant.

Roz Mawar JC:

[1] On 11 April 2023 this court recorded a consent judgment that confirmed all the plaintiffs above with the exception of the first and 13th plaintiffs, are direct lineal descendants to the Pemegang Amanah Kepada Linggiu Valley Orang Asli (JAKUNS) Trust ('the trust'). In brief, the consent judgment recorded that the defendant is to make the following payments:

(a) RM123,000 collectively to the second to the 12th plaintiffs within 30 days from 24 March 2023;

(b) RM123,000 collectively to the 14th to the 17th plaintiffs within 30 days from 24 March 2023; and

(c) RM123,000 collectively to the 18th and 19th plaintiffs.

[2] Pursuant thereto, this court heard arguments on whether the second to 12th plaintiffs and the 14th to the 19th plaintiffs (collectively referred to as 'the descendant plaintiffs') were entitled to interest on the outstanding payments. That led to the argument of whether, should this court rule that interests must be paid, it is to be paid out of the trust or by the defendant should this court rule that the descendant plaintiffs are entitled to the payment of interest. There is also the issue of whether the descendant plaintiffs are entitled to have access to the exact details/accounts/receipts/payments and/or statements of all accounts of the trust prepared by Mr Ng Eng Kiat of Folks Corporate Services Sdn Bhd from the year 2009 to 2019.

THE TRUST

[3] The backdrop of this suit concerned the agreement entered into between the Johor State Government and the Government of Singapore around 1990 for the construction of a dam at Sg Linggiu catchment area for the supply of water to Johor and Singapore. The Sg Linggiu catchment area comprised of several villages, among them Kampong Sayong Pinang, Kampung Pasir Assam (Pasir Intan) and Kampung Semanggar Dalam — all occupied by the orang asli included the plaintiffs and/or their ancestors.

[4] The Government of Singapore paid approximately RM320m to the Johor State Government. For the construction of the dam, the orang asli had to be evicted to give vacant possession of the land. Legal action ensued at the Johor Bahru High Court by the orang asli who were deprived of their ancestral land and traditional resources of their land and livelihood. The Johor Bahru High Court on 19 December 1995 gave judgment in favour of the orang asli in the sum of RM26.5m. The Court of Appeal affirmed the said decision on 19 November 1997 with an additional 8% interest on the judgment sum. The Federal Court in turn had affirmed that decision on 21 March 2000.

[5] In response to the application by the orang asli to manage the said judgment sum, the Johor Bahru High Court on 5 June 2000 ordered ('trust order'), amongst others:

(a) the Johor State Government is to pay the judgment sum with interest of 8%pa from 4 November 1994 to 5 June 2004 — it amounted to RM34,554,111.92;

(b) RM22m from that said amount was to be paid into a trust account and a trust be established under the name of the Linggiu Valley Orang Asli (JAKUNS) Trust;

(c) the trust was to be established in the form as per the trust deed and as amended by the terms of the trust order; and

(d) the balance of RM16,554,111.92 was to be distributed to the orang asli after deduction for legal fees, costs, consultation fees and expenses incurred.

[6] On the even date, the trust deed was executed. Amongst the terms were that the orang asli and their descendants were entitled to payment of RM900 per month, and that no child descendant shall be entitled to any share or distribution during the lifetime of his parent. The trustees (two of the headmen of the communities residing in Kampong Pasir Assam (Pasir Intan), Sayung Pinang and Semanggar, the Director General of Jabatan Orang Asli (if willing to accept the office) and one other independent person) shall have prepared by

a certified public accountant certified financial statements in each financial year. They shall establish and maintain proper accounts in book or computer form which shall accurately record all receipts and outgoings, income and capital in relation to the trust fund.

[7] Since the inception of the trust until 2009, the appointed initial trustees have made monthly payments of RM900 monthly to the beneficiaries of the trust. However, in early 2009 some of them (not any of the plaintiffs in this suit) initiated a suit at the Johor Bahru High Court to suspend the trustees and appoint HSBC Trustees as new trustees of the trust.

[8] On 17 April 2009 the Johor Bahru High Court granted the said order and suspended the initial trustees. Ng Eng Kiat was appointed as receiver and manager of the trust funds.

[9] Ng Eng Kiat performed his duties until 17 January 2019 when the Court of Appeal removed him and ordered that HSBC Trustee assumed the position of trustee for the trust. However, HSBC Trustee declined. The matter then was referred back to court and on 10 March 2019, the defendant was appointed as the new trustee of the trust. All terms in the orders of the trust order and Court of Appeal order binded the defendant.

[10] At the beginning of its tenure, the defendant discharged its duties as trustees. There was an informal meeting in December 2019 between one G Ragumaren who claimed to have represented the defendant and some of the beneficiaries of the trust, with one Saling bin Lau Bee Chiang suggested that payments to the plaintiffs ought to stop as they have moved to Rompin, Pahang. The defendant then suspended payments to the plaintiffs with no prior notice or explanation. Hence the filing of this suit on 26 September 2022. Parties agreed to a consent judgment on 11 April 2023.

[11] To adjudicate on the two matters outstanding — the question of interest and whether the plaintiffs are entitled to access to the financial accounts, this court first refers to the trust deed. It concerned 52 orang asli whose names appeared in the First Schedule to the trust deed. They were heads of their respective families in those three areas in the Sg Linggiu catchment area. The RM22m was to be kept in trust for them, their immediate families and thereafter their descendants. It was clearly stated that the beneficiaries of the trust were them and 'their direct lineal descendants' under cl 2.

[12] The paramount duty of the trustee as provided for by the trust deed is to pay RM900 per month to each of those orang asli named in the First Schedule. Clause 4.2 is reproduced herein:

> The Trustees shall each month, unless varied by an Order of the Court, pay a sum of RM900.00, to each Plaintiff out of the income of the Trust fund and if the income be insufficient, the Trustees may resort to the Capital to make such payments.
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> Provided that upon the death of any of the Plaintiff, his share shall be paid to his lineal descendant, and if more than one, in equal share of the amount payable to his or their parent if then living.

[13] This court concludes that the defendant as trustee could not stop any monthly payment whatsoever unless the court orders so. When the defendant halted payments in December 2019, the descendant plaintiffs were deprived of their rights and entitlement to the moneys due until April 2023 when the consent judgement provides for the payments of all moneys due. As such, the second to the 12th plaintiffs and the 14th to the 19th plaintiffs are entitled to interest on the outstanding sum. In the case of *Golden Stars & Ors v Ling Peek Hoe & Anor & Another Appeal* [2023] 1 LNS 1406, the Court of Appeal found:

> [72] In any event, we find that s 11(1) of the Civil Law Act 1956 ('the CLA') confers upon the court the power and discretion to order interest to *run from the date when the cause of action arose in an action for damages*. This was duly considered by the HC and indeed was ordered as such. The aforesaid provision states:
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> > In any proceedings tried in any court for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest as such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

[14] As to how much interest, this court awards interest in the sum of 8%pa on the sum to be paid, to be calculated from December 2019 until 11 April 2023. This is premised on s 11 of the Civil Law Act 1956 which accorded the courts the power to award interest on debts and damages and also O 42 r 12 of the Rules of Court 2012. This court considered the Practice Direction No 1 of 2012 that was highlighted by the defendant in seeking if at all, the interest rate of 5%pa. In this case, there are the factors of the hardship suffered by the descendant plaintiffs. Moreover, the interest rate of 8%pa was also the figure the Court of Appeal had imposed in its order and affirmed by the Federal Court.

[15] This court noted that the descendant plaintiffs were deprived of their entitlement over a substantial period of time. Taken into account too, were facts that they had lived in dire straits with the movement control order of 2020 as a result of the Covid-19 pandemic and the floods in 2021 when they had lived without any income. This court is of the considered view that it is fit, fair and reasonable to order such interest at the rate of 8%pa. See *Dato Vijay Kumar Natarajan v UOL Credit Sdn Bhd* [2013] MLJU 1641; [2013] 9 CLJ 874 and

Vathemurthy a/l Arumugam & Anor v RS Thanenthiran a/l Raman Kutty & Anor [2019] 9 MLJ 212; [2019] 2 CLJ 132.

[16] The descendant plaintiffs had sought that such payment for interest be paid from the defendant itself contending that the defendant as trustee ought to have resolved the matter way back in 2019 to ensure payments are made to those orang asli named in the First Schedule to the trust deed and their lineal descendants. It was submitted that it would be most unfair for the trust fund to suffer due to the non-performance or failure to discharge duties by the defendant as trustees.

[17] It is true that the descendant plaintiffs could have been saved from the trouble and expenses of this litigation if the defendant had taken efforts to look for the descendant plaintiffs. The defendant had explained that the main point of communication was through the 'Tok Batin' of each village. For the December 2019 meeting, the defendant contended that they had no knowledge that the descendant plaintiffs had moved to Rompin, Pahang and thus was not able to separately notify them. When the defendant found out that Ngah bin Bujang and Liman bin Bujang had passed on, the monthly payments made since then were stopped since it was not able to verify their direct lineal descendants. But as soon as they had verified them as a result of this suit, the defendant had duly agreed to make payments as evident from the consent judgment.

[18] The trust deed empowered the trustee to invest moneys as authorised or permitted under the Trustee Act 1949. Clause 7.4 of the trust deed listed the powers, authorities and discretions vested in the defendant that include, amongst others:

(a) Generally deal with trust fund: to sell, call in and convert into money, grant options or rights to purchase or otherwise deal with, dispose of, or transfer any item or assets comprising the whole or any part of the trust fund or otherwise held by the trustees under the terms of the Trust for such consideration and on such terms as in their discretion they deem fit;

(b) Real property: to acquire, dispose of, exchange, charge, sub-charge, lease, let grant release or vary any right or easement, or otherwise deal with real property or any estate or interest therein;

(c) Personal property: to acquire, dispose of, exchange, hire, lease, let, charge or otherwise deal with personal property of any kind;

(d) To let: to lease and let property forming part of the trust fund or held by the Trustees pursuant to the provisions of this Deed for such period at such rental and to any persons upon terms and conditions as the trustees decide, and to accept surrenders from make allowances to and arrangements with lessee or tenant as the Trustees deem fit;

(e) Engage experts: employ or engage agents or professionals in the execution of the trusts and powers. Instead of actin personally from time to time, to employ or engage and pay out the trust fund such managers, agents, advisers, solicitors, auditors, accountants, brokers, surveyors or other persons to transact any business or to do any act required to be done in connection with the administration of the trusts and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance therewith;

(f) Power to lend: to lend monies forming part of the trust fund or give credit to any person on such terms as may seem expedient and in particular, but without limiting the generality of the foregoing to a beneficiary or person having an interest, actual or contingent Any such lending or giving of credit may be made at call or at no interest and may involve taking of security in any form whatsoever with or without security;

(g) Bank accounts: to open in the name of the Trust or in the joint names of the Trustees any cheque, savings or other account with any bank or financial institution in Malaysia as the Trustees think fit, with full power to operate on any such account including, but without limiting the generality of the foregoing, power to sign, drawn and endorse cheques and other negotiable or transferable instruments on any such account and to close the same;

(h) Management expenses: to pay out of the trust fund or the income thereof all costs, charges and expenses incidental to the management of the trust fund or to the exercise of any power, authority or discretion herein contained or in carrying out or performing the trusts of this deed which the Trustees consider appropriate;

(i) General expenses: to pay insurance premiums, rates, taxes, rents and outgoings in connection with real or personal property of the trust fund, to manage such property and effect repairs thereto as the Trustees may consider necessary and advisable. Where the Trustees are unable to charge such expenditure against income of the trust fund they shall be at liberty to resort to the Capital;

(j) Corporate securities: with respect to any company in which the Trustees holds shares stocks debentures options convertible notes or is otherwise interested or concerned (in this sub-clause called 'Securities') to exercise the following powers in addition to power conferred by law:

(i) to pay calls on Securities or permit Securities to be forfeited and sold;

(ii) to purchase Securities and take up Securities of a new issue;

(iii) to attend meetings personally or by proxy or attorney or representative and vote at the discretion of the Trustees;

(iv) to sell Securities at such price and upon such terms with or without security as the Trustees think fit;

(v) to assent to or join in any arrangement relating to the sale, transfer or exchange of any Securities or modifying any rights, privileges or interests in relation thereto; to agree to any scheme of arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which the Securities form the whole or any part of the trust fund, or by which any such Securities are substituted or given in exchange either wholly or partly for other Securities, whether in the same company or not and for any such purpose deposit, surrender or exchange any scrip or documents of title relating thereto; to pay out of the capital of the trust fund or property held in trust, pursuant to the provisions of this deed, or the income thereof any contribution or incur any expense in connection with such scheme or arrangement and generally to manage and deal with any such Securities as if the trustees owned the beneficially; and

(vi) to agree in respect of winding up with the liquidator of the company or any member of the company or any other person in all things as the Trustees shall think fit for the division or partition in kind or specie of the assets or property of whoever nature of the company; to accept any such assets and property in payment or satisfaction of any interest of the Trustees in the company with power to pay any monies by way of equality of division or partition;

(k) Unit trust interests: to acquire units or sub-units of any fixed or flexible unit trust whatsoever either by way of application purchase or by way of settlement by the Trustees in the establishment of such unit trust and to exercise all rights including voting rights and perform all obligations as a holder of any units in such trust and to accept all distributions by the trustees of such unit trusts as income or capital of the trust fund;

(l) Maintain property: to maintain and preserve in good and substantial order and food condition real or personal property of the trust fund or otherwise held by the Trustees under the terms of this deed and to pay or defray the costs thereof;

(m) Trustees' power to deal with itself: notwithstanding any rule of law or equity to the contrary, the Trustees whoa re representatives of the community may acquire any property of the trust fund, real or personal property, the beneficial interest in which is at the date of such acquisition the absolute property of the Trust; PROVIDED THAT any property so acquired for a consideration being not lesser than the market value.

[19] As such this court takes comfort that to order the interest of 8%pa on the payments required to be paid by the defendant to the descendant plaintiffs to be paid from the trust fund does not prejudice the trust or its beneficiaries. This court opines that in this instance, it is fair to order so. The consent judgment was executed on without admission to liability basis. References were made to *Bungsar Hill Holdings Sdn Bhd v Damansara Realty Bhd* [2019] MLJU

222; [2019] 4 CLJ 429 and *Lim Kar Bee v Abdul Latif bin Ismail* [1978] 1 MLJ 109.

[20] In this court's assessment of whether to allow the descendant plaintiffs access to all details/accounts/receipts/payments and/or statements of all accounts of the trust, this court regarded cl 8 of the trust deed that specifically required the defendant:

> 8.1 In each financial year the Trustees shall have prepared by a certified public accountant authorised to practise in Malaysia financial statements, including a profit and loss account and balance sheet as at and of each financial year certified by such accountant to be true and proper statement of the affairs of the trust setting out all:
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> (a) Income of the trust fund;
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> (b) Capital of the trust fund;
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> (c) Costs disbursements and other outgoings paid or payable out of the trust fund and chargeable against income;
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> (d) Capital expenditure and liabilities chargeable to capital;
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> (e) Investments and money comprised in the trust fund;
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> (f) Amounts distributed by the Trustees to each beneficiary;
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> (g) To the extent to which the trustees may require, the separate recording of any category of income of capital.
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> 8.2 The Trustees shall
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> (a) establish and maintain proper accounts in book or computer from which shall accurately record all receipts and outgoings in relation to the trust fund;
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> (b) separately record income and capital of different categories as are provided by this deed as the Trustees may decide.

[21] The defendant is definitely under a duty to keep the accounts. The submissions of the descendant plaintiffs cited the cases of *Damayanti Kantilal Doshi & Ors v Jigarlal Kantilal Doshi & Ors* [1998] 4 MLJ 268; [1998] 4 CLJ 81 and *Yvonne Wong Yee Woon v Wong Yee Mei @ Cynthia (as administrator for the estate of Wong Poi Fong @ Wong Swee Fong, deceased) & Anor* [2022] 12 MLJ 309; [2022] 6 CLJ 786. However, unlike the facts in *Saling bin Lau Bee Chiang & Ors v Kanawagi a/l Seperumaniam & Ors* [2009] MLJU 1512; [2010] 8 CLJ 347, there was no evidence that the defendant had lacked accountability of the accounts or there were no proper keeping of records.

[22] In this instant, this court is of the considered opinion that the request sought is not reasonable and proves too onerous on the defendant. This court does not see the necessity in granting such orders. Those items requested would

not serve any more of a purpose than the year end financial statements that are mandated to complete. The descendant plaintiffs had not demonstrated the need for such items.

[23] On the basis of fairness, this court orders for the financial statements for the years ended 2019, 2020, 2021 and 2022 prepared by the certified public accountant to be furnished to the descendant plaintiffs. These, the defendant is required to furnish within seven days of the date of this judgment.

THIS COURT'S ORDER

[24] This court has considered the facts and circumstances of this case. The submissions and the authorities were also taken into account. This court orders that:

(a) the descendant plaintiffs are granted the payment of interest of 8%pa on the payment sums stipulated in the consent order, to be calculated from 31 December 2019 to 11 April 2023;

(b) the said interest sum is to be paid out of the trust fund;

(c) the defendant is to furnish to the descendant plaintiffs the financial accounts for the financial years ended 2019, 2020, 2021 and 2022 prepared by the certified accountant within seven days of the date of this judgment; and

(d) no order as to costs.

Order accordingly.

Reported by Nabilah Syahida Abdullah Salleh